

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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Knox
12193

FILE: B-208833

DATE: December 22, 1982

MATTER OF: A&M School Bus Service

DIGEST:

1. Cancellation of solicitation and resolicitation for required bus transportation services was proper where agency reasonably determined that initial solicitation specifications did not reflect agency's minimum needs.
2. Contracting officer's decision not to procure required services through a small business set-aside was not an abuse of the discretion granted him under the procurement regulations where he determined on the basis of prior procurements that there was no reasonable expectation that offers from two responsible small business concerns would be received.

A&M School Bus Service (A&M) protests the cancellation of invitation for bids (IFB) No. F08621-82-B-0023 (0023) and the resolicitation of the requirements under IFB No. F08621-82-B-0108 (0108), by Homestead Air Force Base, Florida. A&M contends that there was no reasonable basis for the cancellation. It also challenges the propriety of the Air Force's decision to issue the solicitations on an unrestricted basis rather than to restrict competition solely to small business concerns. For the reasons that follow, we dismiss the protest in part and deny it in part.

IFB 0023, issued June 1, 1982 on an unrestricted basis, was for bus transportation services for the Air Force's Military Entrance Processing Station (MEPS) at Homestead AFB. The buses were to be used to transport applicants for military service between the MEPS and various lodging and transportation facilities in the Miami area. The Air Force received three bids at bid opening; A&M's apparent low bid was approximately half of the second low bid.

During a preaward inspection of A&M's facilities, it became clear that the firm intended to perform the contract with blue school-type buses which were not air conditioned. The solicitation did not require air-conditioned buses. As for the type chassis which was acceptable, the specification standards stated only that "Buses will not be school-type, i.e., yellow in color." The Air Force advises that the intent of this provision was to require a coach-type chassis in lieu of a school bus-type chassis. It concedes its intention was not made clear in the solicitation since "school" buses were defined solely in terms of their paint color. A&M's bid, therefore, was responsive to the solicitation's specifications. The Air Force determined, however, that the solicitation specifications were inadequate and ambiguous because they should have specified air-conditioned, coach-style buses, as requested by the using activity. On August 10, the Air Force canceled IFB 0023, and on August 20, issued IFB 0108 on an unrestricted basis with revised specifications requiring air-conditioned, coach-style buses. Bid opening under this solicitation has been postponed pending our resolution of A&M's protest.

A&M contends that the Air Force's minimum needs would be adequately met through the use of non-air-conditioned, school-type buses and, therefore, there was no compelling reason to cancel the IFB under which A&M was the low bidder.

The Air Force states that the purchase request from the using activity clearly specified that the buses required were to be air-conditioned, coach style, but that because of an oversight by the contracting activity the specifications for IFB 0023 omitted these requirements. When the type of equipment A&M proposed to use was brought to the attention of the using activity, the Air Force states it realized that the specifications did not reflect its minimum needs and canceled the solicitation for that reason.

Cancellation of a solicitation after bids have been opened and prices have been exposed is not permitted unless a cogent and compelling reason for cancellation exists. The determination as to whether such a reason exists, however, is an administrative one that is not subject to legal objection unless the protester can demonstrate that the decision was arbitrary, capricious, or not supported by substantial evidence. McGregor Printing Corporation, B-207084, B-207377, September 20, 1982, 82-2 CPD 240.

A&M has not made that showing. It argues that there is no justification for the Air Force's use of air-conditioned, coach-style buses because the applicants will be making relatively short trips "subject to the Floridian climate, beloved by millions of visitors." In contrast to the protester, the Air Force describes the south Florida climate as "hot and humid." It states that the 45-minute bus trip around the Miami area is the first exposure to military life for most of the applicants and, as part of an effort to enlist qualified people, the Air Force wants to "project an image of professionalism and first class treatment" by transporting applicants in comfort. While A&M may disagree with the Air Force as to the degree of comfort (or discomfort) in which the applicants should be transported, it is for the agency to determine what its minimum needs are, and we cannot say that the Air Force's determination here was arbitrary or capricious. Therefore, since the specifications contained in IFB 0023 did not reflect the Air Force's minimum needs, the contracting officer acted reasonably in canceling the solicitation and resoliciting the requirements under specifications which satisfy those needs.

A&M next contends that both solicitations should have been small business set-asides. A&M argues that the Air Force is required by Defense Acquisition Regulation (DAR) § 1-706.1(f) to set these procurements aside because it had previously procured these services through small business set-asides.

With respect to IFB 0023, A&M's protest on this ground is untimely. The allegation concerns an impropriety in the solicitation which was apparent prior to the date set for bid opening. Under our Bid Protest Procedures, this allegation should have been, but was not, filed prior to the bid opening date in order to be considered. 4 C.F.R. § 21.2(b)(1) (1982); Basin Research Associates, B-204245, December 21, 1981, 81-2 CPD 484.

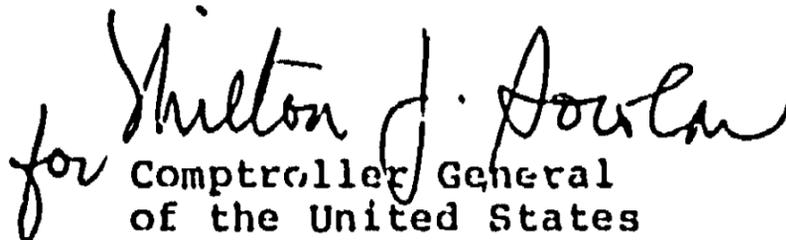
Regarding IFB 0108, the Air Force advises that although it considered the possibility of setting it aside for small business concerns, an investigation of prior procurements

indicated that when an IFB contained a requirement for air-conditioned buses, bids from at least two responsive small business concerns were not submitted. Therefore, the Air Force states, "serious doubt existed as to whether at least two such bids would be received, and whether or not award could be made at a reasonable price."

DAR § 1-706.1(f) provides that once a service has been successfully acquired through a small business set-aside, all future requirements of the contracting activity for that service must be set aside unless the contracting officer determines that there is not a reasonable expectation that offers from two responsible small businesses will be received and the award will be at a reasonable price. Honolulu Disposal Service, Inc.--Reconsideration, B-200753.2, August 12, 1981, 81-2 CPD 126. The determination of the extent of competition expected is essentially a business judgment for the contracting officer to make. We will not substitute our judgment for that of the contracting officer and will sustain determinations concerning these matters absent a clear showing of abuse of discretion. Ingersoll-Rand, B-207005, April 12, 1982, 82-1 CPD 338.

The contracting officer determined here that there was no reasonable expectation that two responsible small business concerns would submit bids on this solicitation. This determination was based on previous procurements of these transportation services where air-conditioned buses were specified. We cannot say, and A&M has not shown, that his decision not to set aside this procurement--in which the Small and Disadvantaged Business Specialist concurred--was a clear abuse of the contracting officer's discretion, and therefore, we find no legal basis to object to it.

The protest is dismissed in part and denied in part.

for  Milton J. Fowler
Comptroller General
of the United States